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IN THE

Supreme Court of the United States

October Term, 1965
No. 417

STATE OF CALIFORNIA,

Petitioner,

vs.

JAMES EDWARD CURRY, WILLIAM LOUIS JAMES,

Respondents.

On Petition for Writ of Certiorari to the District Court of Appeal, Second Appellate District, Division Two, of the State of California.

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On Petition for Writ of Certiorari to the District Court of Appeal, Second Appellate District, Division Two, of the State of California.

The State of California prays that a writ of certiorari issue to review the judgment of the District Court of Appeal, Second Appellate District, Division Two, entered in the above case on February 9, 1965.

Opinions Below.

A certified copy of the opinion of the District Court of Appeal accompanies this petition. The opinion is reported in 232 A.C.A. 197 and 42 Cal. Rptr. 513.

Jurisdiction.

After the opinion of the District Court of Appeal was filed petitioner requested a hearing by the California Supreme Court, but a hearing was denied without opinion on April 6, 1965.

Petitioner invokes the jurisdiction of this Court under 28 U.S.C. section 1257(3), since a right has been especially set up and claimed under the Constitution of the United States.

Questions Presented.

1. Are free and voluntary confessions by state prisoners, who have neither requested nor been refused counsel, inadmissible in a state criminal trial by reason of the Constitution of the United States solely because the investigating officers did not advise the suspects of their right to consult with counsel and their right to remain silent?

2. Are free and voluntary confessions by state prisoners, who have neither requested nor been refused counsel, inadmissible by reason of the Constitution of the United States because the prosecution did not establish that the suspects at the time of the questioning made a knowing and intelligent waiver of both (a) their right to consult with counsel and (b) their right to remain silent?

3. If so, are such free and voluntary confessions inadmissible where the record does not affirmatively establish that the suspects were not advised of their rights and did not waive them?

4. If so, are such free and voluntary confessions inadmissible where they were received in evidence by stipulation entered into by the defense to gain advantage?

Statement of the Case.

In an information filed by the Los Angeles County District Attorney on August 26, 1963, William Louis James and James Edward Curry were charged with

murder in violation of section 187 the California Penal Code. There were two other codefendants, who are not presently before us, Johnny Batts and Lawrence Roberts [Clk. Tr. p. 176.][1]

The cause was submitted on the preliminary transcript and the exhibits presented at a preliminary hearing. [Clk. Tr. p. 180, Rep. Tr. pp. 8-14.]

Johnny Batts was found by the court to be "not guilty". The remaining defendants were adjudged guilty of first degree murder and sentenced to life imprisonment with the possibility of parole. [Clk. Tr. p. 182.]

Appeals by Curry and James to the State District Court of Appeal were perfected and the judgments were reversed.

Statement of Facts.

At 9:45 p.m. in the evening of June 12, 1963, Clyde Bollinger was at work at his gas station in Compton, California, when he heard a noise at the door. There he found Harley Odneal, blood coming out of his eyes and mouth, doubled over and holding his stomach. "Blood all over, coming out of his eyes and mouth, and it seemed as if even his nostrils. He was bleeding so severely it was all he could do to talk." [Clk. Tr. pp. 6-8.] Harley Odneal had difficulty speaking but said that a colored man had shot him over by the register. [Clk. Tr. pp. 7, 9-10.]

By the time Mr. Bollinger telephoned for an ambulance Harley Odneal was dead. [Clk. Tr. p. 9.] The autopsy blamed death on a gunshot in the chest that penetrated the heart and right lung. [Clk. Tr. p. 34.]

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[1]"Clk. Tr." refers to the Clerk's Transcript and "Rep. Tr." refers to the Reporter's Transcript. Certified copies of these proceedings in the State trial court accompany this petition.

An officer who arrived at the scene at about 9:57, said he was unable to have any conversation with the victim. "There was slight bubbles forming at the mouth, blood, and there was one movement of the head." [Clk. Tr. p. 28.]

(As noted by the District Court of Appeal, appellants told the police, in the words of that court):

"Regarding the statements made by appellant Curry, Officer Correa testified as follows:

Q. Now, Officer, when and where did this conversation with the defendant Curry take place? A. It took place in my office, Compton Police Department, on July 17th, 1963, during the late morning hours.

Q. Who was present during that conversation? A. James Curry and myself.

Q. I ask you whether or not any and all statements made by the defendant James Curry at that time were made freely and voluntarily? A. They were, sir. . . .

Q. Would you tell the Court then, Lieutenant Correa, the sum and substance of that conversation only as it pertains to this case? A. Yes, James Curry stated that on that particular day he was at Johnny Batts' house sitting in Johnny Batts' vehicle, a '53 Buick, as I recall. Seated in the vehicle with him, he states, were Johnny Batts, William James, Lawrence Roberts and himself. They discussed robbing somebody. He said that they all agreed as to what was to happen. He stated that Johnny Batts was to drive the vehicle. He was to hit the man with his fist. William was supposed to grab the money from the box, and Law-

rence Roberts was to hold the gun on the man. He further stated that he went into his home and secured a pistol that he described as belonging to Jimmy Givens, stating that Jimmy Givens had given him this gun and told him to hold it for him, or let it stay at his house for a few days. He further stated that they drove about Rosecrans, near Rosecrans and Alameda, and that Johnny Batts had parked the vehicle down a side street, at which time three of them, James Curry, William James, and Lawrence Roberts had gotten out of the vehicle and walked to the gas station. He further stated that the man at the gas station had reached for his back pocket, as I recall, and Lawrence had shot him. Then he and the other two persons ran back to the car where they were driven home by Johnny Batts. That is my recollection of the conversation held with the defendant."

The officer testified to the statements made by appellant James as follows:

"Q. Now, Lieutenant Correa, I ask you whether or not you had an occasion to have a conversation with the defendant herein, William Louis James? A. That is correct, sir.

Q. And when and where did that conversation take place?

The Court: The record will show that this is applicable to the defendant James only. A. The conversation I had with William James was held in my office, the Compton Police Department, on July 17th, 1963, in the early afternoon hours. I think it was just shortly after noon.

Mr. Marin: Q. And who was present during that conversation? A. William and myself.

Q. I ask you whether or not any and all statements made by the defendant James at that time were made freely and voluntarily? A. That is correct, sir.

Q. Would you tell the Court the sum and substance of that conversation only as it pertains to this case? A. Yes. William stated that he had been at Johnny Batts' house and that at that time they had been sitting in Johnny Batts' vehicle. He also described it as a '53 Buick. Further, that all of them were talking about hitting somebody. I asked him what 'hit' meant, and he said, 'Well, to rob somebody.' At this time, he stated that it was agreed that he was to grab the money from the box. James Curry was supposed to hit the man over the head with a rock, I think he told me a brick or a rock, and that Lawrence Roberts was to hold a gun on the man in case there was any trouble. And that Johnny Batts was to drive them to the location and then wait for them and drive them back. He stated that they drove about the Alameda area, and that they pulled down the street and parked, at which time he, James Curry, and Lawrence Roberts got out of the vehicle and went toward the gas station. He further stated that the man at the gas station had reached for something in his hip pocket, at which time he was shot, and then he fled. He ran back to the location where Johnny Batts had parked and was driven to James Curry's home where James took the gun and hid it in the bushes. This is what I can recall of the conversation."

[The statements were summarized by the District Court of Appeal, as follows:]

> "The only other evidence introduced against the three defendants found guilty of this crime (only two of whom have appealed) is their individual confessions. Each of these confessions was received only as against the person who made it and not against the others. No serious contention was made that they were involuntary, nor was this issue originally raised on this appeal."

How the Federal Question Arose.

This case is a grandchild of *Escobedo v. Illinois,* 378 U.S. 478 and a child of *People v. Dorado,* 62 A.C. 350, 398 P. 2d 361, 42 Cal. Rptr. 169, cert. den., ... U.S. ..... In *Dorado,* the Supreme Court of California felt constrained by *Escobedo* to hold, as a matter of federal constitutional law, that once the "accusatory" stage of a police investigation is reached, the police must advise a suspect who has not requested and been denied counsel of his right to consult with counsel and to remain silent, and that if he does not waive those rights his free and voluntary confession may not be used against him at his trial. In the instant case, the California District Court of Appeal felt itself constrained by *Escobedo* and *Dorado* to hold, as a matter of federal constitutional law, that unless it appears affirmatively from the record that the police gave the requisite caution and that the suspect gave the requisite waiver, it will be presumed that there was no warning and no waiver. By timely petition for hearing directed to the California Supreme Court, a certified copy of which accompanies this petition, petitioner challenged the correctness of that holding.[2]

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[2]Petitioner's argument was explicitly rejected by the California Supreme Court in *People v. Stewart,* 62 A.C. 597, 400 P. 2d 97,

Reasons Why a Writ of Certiorari Should Be Granted.

1. The Decision Below Rests Upon a Misinterpretation of Escobedo v. Illinois, 378 U.S. 478.

The District Court of Appeal held, relying on *Dorado,* that Curry and James were deprived of a federal right when their free and voluntary confessions were received in evidence against them. The question, therefore, is not whether it is good practice for the police to caution suspects during interrogation, nor is it whether a state court may fashion a state rule of evidence requiring the police to give legal advice. The question is, rather, whether the Constitution of the United States compels the police to caution suspects or to suffer the exclusion of free and voluntary confessions, which are reliable evidence of guilt, and sometimes, as in the case at bar, are the only evidence of guilt.

It is unnecessary for petitioner to quote to this Court the substance of its own ruling in *Escobedo,* which holds merely that the state must honor a suspect's request to see his attorney during interrogation. It is a far cry from that careful and very limited decision to a ruling that the police must arraign suspects before questioning them with the same formalities required in judicial proceedings. *Cf. Carnley v. Cochran,* 369 U.S. 606.

This Court denied certiorari in *Dorado,* but it likewise denied certiorari in an Illinois case which specifically rejected the *Dorado* rule. In addition, *Dorado* is contrary to a number of federal cases, as well as to deci-

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43 Cal. Rptr. 201 and in *People v. Lilliock,* 62 A.C. 651, 401 P. 2d 4, 43 Cal. Rptr. 699.

sions in Massachusetts, New York, Pennsylvania, Wisconsin, North Carolina, Virginia, Maryland, Idaho, Nebraska and Nevada.[3] Certiorari should be granted here, if only to secure uniformity of interpretation upon a constitutional question of the first importance to the administration of justice in every state.

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[3] *People v. Hartgraves,* 202 N.E. 2d 33 (Ill. 1964), cert. den.;
People v. Lewis, 207 N.E. 2d 65, 66 (Ill., 1965);
People v. Gilson, 207 N.E. 2d 68, 71 (Ill. 1965);
Comm. v. Coyle, 203 A. 2d 782 (Pa. 1964;
Comm. v. Patrick, 206 A. 2d 295, 299 (Pa. 1965);
Browne v. State, 131 N.W. 2d 169 (Wis. 1964);
State v. Upchuck, 141 S.E. 2d 528, 531 (No. Car. 1965);
State v. Elam, 263 N.C. 273, 139 S.E. 2d 601, 607 (No. Car. 1965);
State v. McLeod 203. N,E. 2d 349 (Ohio 1964);
Cowans v. State, 209 A. 2d 552 (Md. 1965);
Anderson v. State, 205 A. 2d 281 (Md. 1964);
State v. Hall, 397 P. 2d 261, 264-5 (Idaho 1964);
State v. Worley, 132 N.W. 2d 764 (Neb. 1965);
Morford v. State, 395 P. 2d 861 (Nev. 1964);
Bean v. State, 398 P. 2d 251, 253-55 (Nev. 1965);
State v. Fox, 131 N.W. 2d 684 (Iowa 1964);
People v. Gunner, 15 N.Y. 2d 226, 257 N.Y.S. 2d 924, 205 N.E. 2d 852;
Coman v. Roy, 207 N.E. 2d 284, 288 (Mass. 1965).

Intermediate appellate courts further support our position.
People v. Agar, 253 N.Y.S. 2d 761 (1964);
Davis v. State, 338 S.W. 2d 940, 941 (C.C.A. Tax 1965);
People v. Scanlon, 84 N.J. S. Ct. 427, 202 A. 2d 448 (1964);
Cf. State v. Neely, 398 P. 2d 482 (Ore. 1965);
State v. Dufour, 206 A. 2d 82 (R. I. 1965);
State v. Mendes, 210 A. 2d 50, 52-54 (R. I. 1965);
Galarza Cruz v. Delgado, 233 F. Supp. 944, 948 (D. Puerto Rico 1964);

See too, *State v. Winsett,* 205 A. 2d 510, 525 (Del. Super. Ct. 1964);
Ward v. Comm., 205 Va. 564, 138 S.E. 2d 293 (Va. 1965);
Beddle v. Comm., 141 S.E. 2d 710, 713;
State v. Longmire, 134 N.W. 2d 667 (Neb. 1965).
United States v. Ogilvie, 334 F. 2d 837, 843 (7 Cir. 1964);
Long v. United States, 338 F. 2d 549, 550 136 (S.C. Cir. 1964);
Jackson v. United States, 337 F. 2d 136 (D.C. Cir. 1964).

2. Even if the Court Below Was Correct in Its Interpretation of Escobedo, It Was an Unwarranted Extension of That Decision to Place Upon the Prosecution the Burden of Proving Waiver.

As disclosed by the record, and as stated by the District Court of Appeal, the evidence did not affirmatively show that the police advised the defendants of their rights and that the defendants waived them. But it did not show that the police did not advise the defendants of their rights and did not waive them. In reversing the judgment, the District Court of Appeal held that the People were under an affirmative obligation to establish waiver and implied that when the record is silent, waiver will not be presumed.

Petitioner submits that this further holding is unsound and is not compelled by the Constitution of the United States. It is common knowledge that suspects, particularly those with prior convictions, are well aware of their rights. The instant holding that a silent record militates against the People is based upon the contrary assumption that they do not know their rights. Petitioner submits that even if the *Dorado* rule is constitutionally sound, the defendant should bear the burden of establishing that he did not know his rights and did not waive them if he seeks to exclude his own free and voluntary confession from the evidence.

3. The Defendants Procured the Admission in Evidence of Their Own Confessions.

While this point was not explicitly urged to the California Supreme Court in the petition for hearing, it appears from the record that the defense instigated the introduction in evidence of the confessions held by the

District Court of Appeal to have been obtained by unconstitutional means.

The case itself was submitted on the preliminary transcript. At the preliminary hearing the prosecution adduced the statement of defendant Roberts in the presence of the defendants.[4] Roberts admitted the robbery and killing, stating he had pulled the trigger. [Clk. Tr. pp. 49-50.]

On cross-examination, the defense elicited that there were four signed statements. [Clk. Tr. pp. 54-55.] The prosecution gave them to the defense. [Clk. Tr. p. 50.] But the prosecution objected to their being put in evidence. [Clk. Tr. pp. 56-57.] The defense then elicited what the others had said about Roberts' statement. [Clk. Tr. pp. 74-82.]

The defense attorneys developed that Curry had left the car two minutes after the others went to commit the robbery, Roberts holding the gun. [Clk. Tr. p. 77.] Curry said he saw their figures and knew it was them. Curry didn't see the man in the dark; all he heard was the gunshot. He ran to the car and a minute later the others arrived. Curry indicated he was some 35 or 40 feet away when th eshot went off. [Clk. Tr. p. 79.]

The defense also developed that James had told the police that he and Roberts had gotten up to the street the filling station was on and were hiding behind some cars. [Clk. Tr. p. 83.] A man came up to them where they were hiding and said, "Hold it," or something, and reached for his back pocket. Then James said the gun fired and they ran. James said he never saw

[4]This was admitted only as to Roberts. [Clk. Tr. p. 86; Rep. Tr. p. 22].

the man who was shot, but he was some three feet from Roberts when the gun was fired. [Clk. Tr. p. 86.]

After the defense brought out the details of admissions made by Curry and James, the prosecution declared its intention to bring in an officer who would testify to other statements, including those of Curry and James. [Clk. Tr. p. 86.]

Accordingly, Lt. Manuel Correa was called to the stand. [Clk. Tr. p. 102.] The defense said:

> "Mr. Vaughn: Your Honor, we will stipulate that these statements may be received in evidence. I don't know why the District Attorney won't put it in."

As to Batts, the defense moved that the statement be received in evidence rather than that the officer relate his recollection of it. The motion was granted and Batts' statement was received as Defendant's Exhibit "A." [Clk. Tr. p. 119.]

Lt. Correa stated the conversations reported in the opinions of the District Court of Appeal. [Clk. Tr. pp. 134-137.] Then the defense elicited evidence of how the defendants had reenacted the crime for the police. [Clk. Tr. p. 146.]

On the motion of the defense, the written statements of Curry and James were put into evidence. [Clk. Tr. p. 172.]

When the case was called for trial, there was some problem between the defense attorneys as to obtaining a continuance. Then the following occurred:

> "Mr. Vaughn: Your Honor, may we pass this? Mr. Mayerson and I were in the process of discussing a possible disposition.

The Court: All right. We'll pass this for the time being.

(Short recess.)

Mr. Mayerson: Your Honor, Mr. Vaughn has suggested that the case could be submitted on this transcript. The transcript runs 175 pages. There would be no additional testimony by any person in the case. Now, that's agreeable with me.

The Court: Does Mr. Wilson join in that?

Mr. Wilson: May I have a short conference with the DA?

The Court: Yes, you may.

(Discussion off the record between counsel.)

Mr. Vaughn: Your Honor, the reason for—although it may seem bizarre in a case of this sort, it's unusual factual situation. It's a felony murder situation, and it's a question, I think, that—to be determined by the Court as a matter of law in the case." [Rep. Tr. p. 8, line 13, to p. 9, line 7.]

The District Attorney indicated he would not press for a death penalty in light of the defendants' age. They were 17, 18 and 19. The Court noted anyone under 18 would not be subject to capital punishment. [Rep. Tr. p. 10.]

Then it was agreed to submit the matter on the evidence and exhibits adduced at the preliminary hearing. There would be no additional testimony. [Rep. Tr. p. 14.]

It must be borne in mind that the defense gained important advantages from the procedure adopted. The prosecution was not allowed to introduce additional evidence. This can be important from the standpoint of im-

position of penalty, which is frequently the real issue in murder cases. The prosecution conceded no application of the death penalty. It may be said that two of the defendants were under 18, anyway. To a defendant, however, this is no small matter to have confirmed, and he can never be entirely sure whether the prosecution will concede the fact of his age, or attempt to assert some unknown circumstance that would permit a capital trial. Thus, he secures important advantages in this tactical choice.

Having secured the presentation of the case which it desired, the defense should not, by all the ordinary standards governing appellate procedures, be allowed to stipulate that evidence be admitted and then obtain a reversal of the judgment because that evidence was admitted pursuant to the stipulation. See *Nelson v. California,* .... F. 2d ...., decided May 26, 1965, Ninth Cir. No. 19,463.

Conclusion.

For the reasons discussed above, petitioner submits that a writ of certiorari should issue to review the decision of the court below.

Dated: This 30th day of July, 1965, at Los Angeles, California.

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